

**State of New Hampshire  
Department of Environmental Services  
Wetlands Program**

**2003-2007 Status and Trends Report**

submitted to  
**United States Environmental Protection Agency  
Region 1**

**April 2008**



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## INTRODUCTION

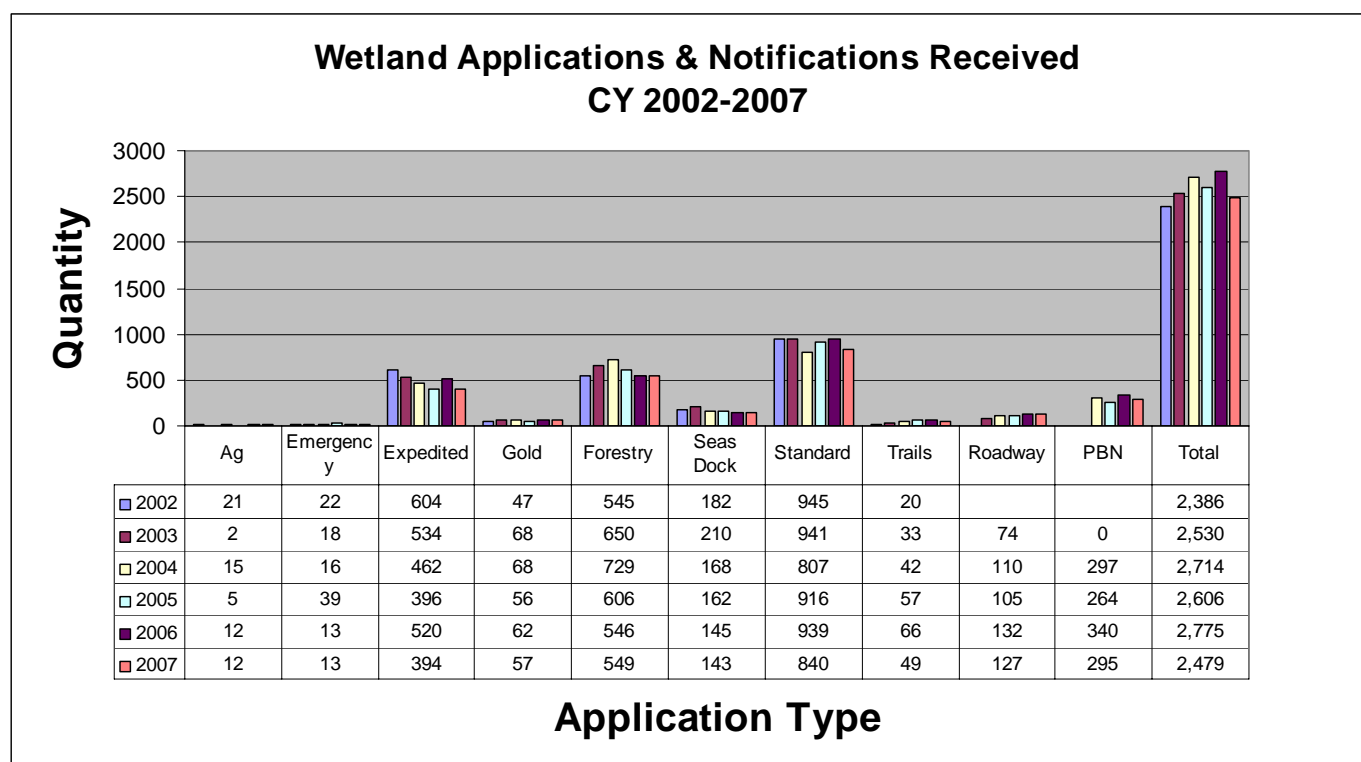
The New Hampshire Department of Environmental Services Wetlands Bureau, operates under the authority of the New Hampshire Revised Statutes Annotated (RSA) 482-A, the wetlands dredge and fill statute. The bureau is responsible for regulating impacts to freshwater and coastal wetlands, surface waters and their banks, dunes, the tidal buffer zone and areas adjacent to state designated prime wetlands.

The bureau's mission is *"to protect, maintain and enhance environmental quality in New Hampshire, through education and the intelligent application of the requirements set forth in statute, with the goal of allowing reasonable development while ensuring the protection of valuable natural resources."*

This report details bureau activities as well as status and trends during the 2003 through 2007 calendar years.

## PERMITTING PROGRAM ACTIVITIES

The bureau is required to determine application completeness and perform technical review for ten different types of permit applications and notifications within specific timeframes as required by state law. The graph below depicts the historical trend in numbers for the various types of applications and notifications.



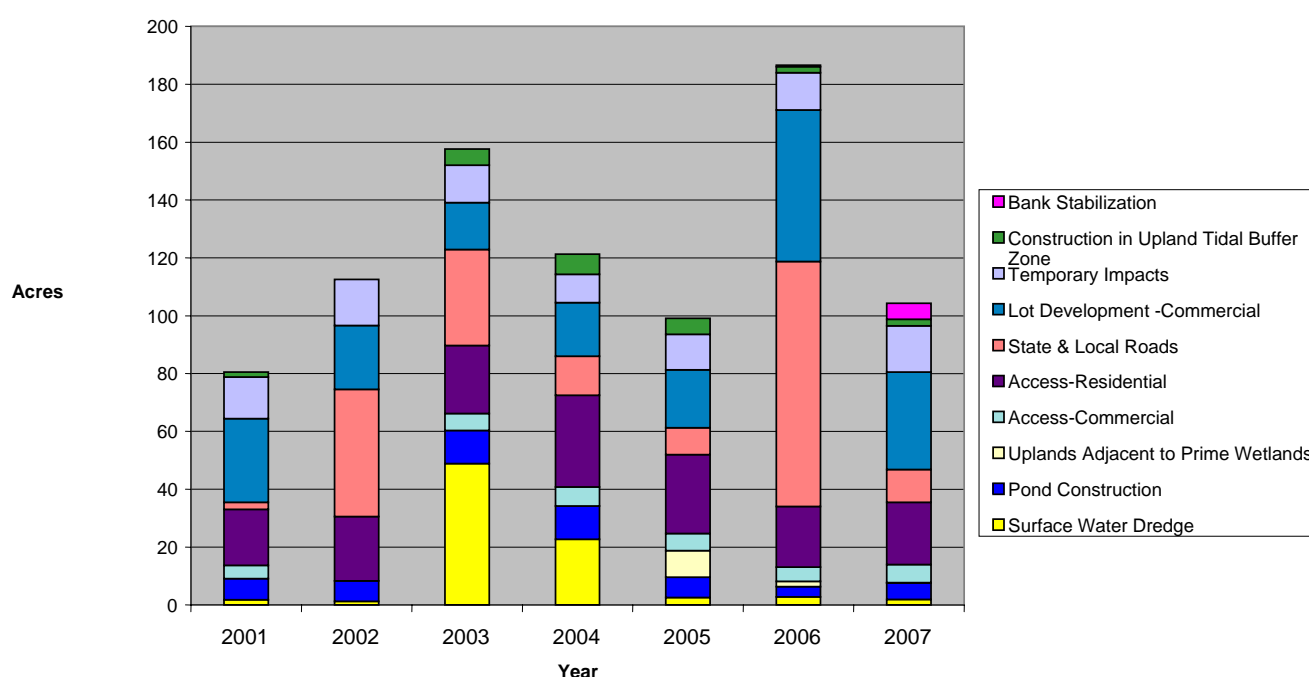
Beginning in June of 2007, the legislature has required the submission of a Wetlands Program quarterly report summarizing the current permit application review performance and the

financial status of the Wetlands Fee Account (See as Appendix A for the first two quarterly reports dated October 30, 2007 and February 5, 2008).

### Wetland Impacts

Over the last five years, the bureau has issued permits for approximately 758 acres of permanent wetland impacts. The graph below shows the permitted wetland impacts associated with the various types of projects.

**Permitted Wetland Impacts by Activity Type**

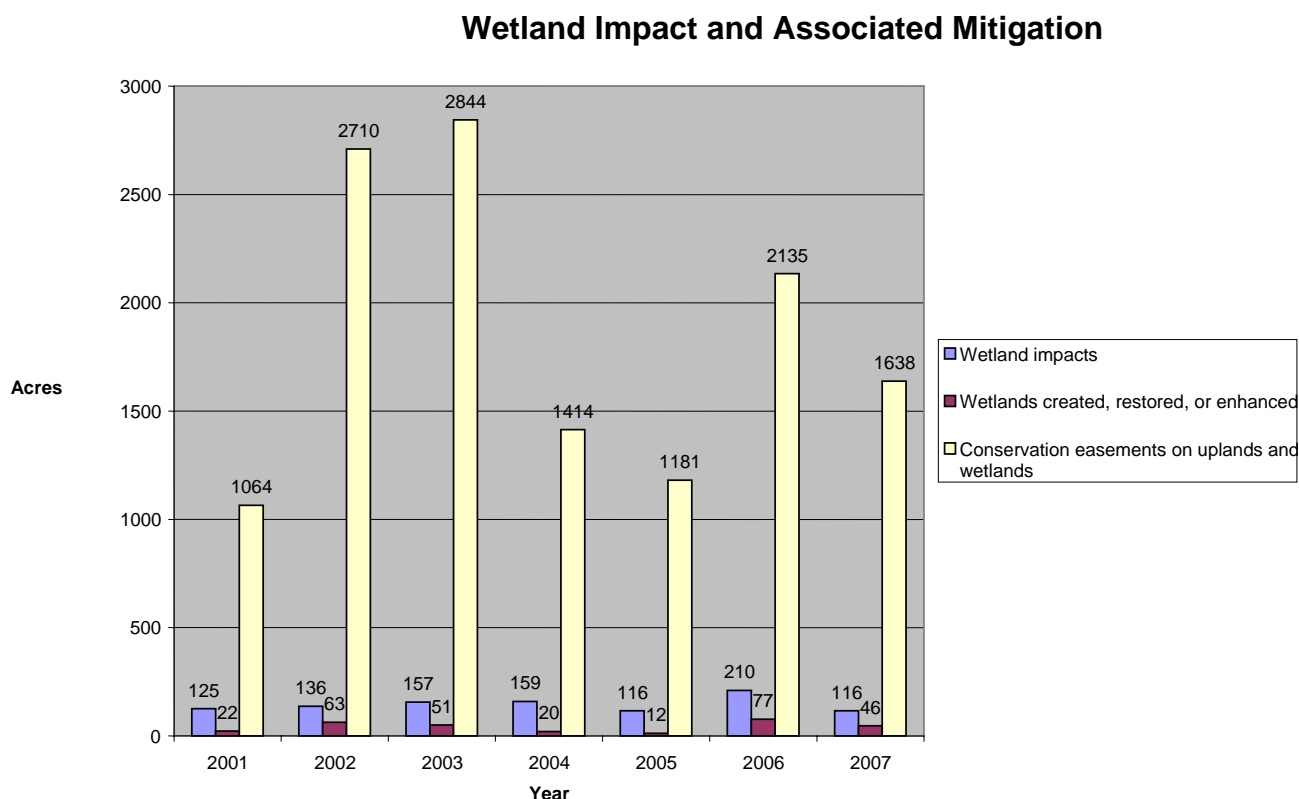


The following anomalies in this data should be noted:

1. In 2003, a permit to dredge 45,000 cubic yards over 2.7 miles of the Cocheco River (see yellow portion of the 2003 bar). This was a Section 10 permit, not a Section 404 permit.
2. In 2006, several large public transportation projects including 76 acres for the Route 93 improvements, 5.25 acres for the Lebanon Airport improvements, and 13.75 acres for the Laconia Airport improvements (see orange portion of the 2006 bar).
3. In 2007, several large public works and transportation projects including 16.72 acres for the construction of the Berlin Federal Prison, 12.8 acres for the Mt. Carberry sanitary landfill and 5.2 acres for expansion of the Manchester Airport.
4. In 2007, approximately 90 permits for bank stabilization and flood abatement projects following the extensive flooding events throughout the state.

## **COMPENSATORY MITIGATION**

For any project that impacts more than 10,000 square feet of wetlands, the applicant is required to provide compensatory mitigation. The figure below details the amount of permanent wetland impacts and the type and amount of wetland mitigation provided to compensate for those wetland impacts.



Over the last five years, approximately 206 acres of wetlands were created, restored or enhanced and approximately 9,000 acres of uplands and wetlands were protected through conservation easements to offset approximately 758 acres of permitted wetland impacts.

It should be noted that the 2006 permit for more than 75 acres of wetland impacts associated with the Interstate 93 improvements included additional mitigation not quantified in the graph above including; \$3 million to supplement the NHDES Drinking Water Supply Land Grant Program and \$3.5 million to fund the Community Technical Assistance.

## **Mitigation Monitoring**

In the summer of 2005, approximately 80 wetland mitigation related projects were reviewed and inspected to determine compliance with permit conditions. In 2006, the Bureau performed field monitoring of 64 conservation easement parcels for compliance and issued 17 follow up letters for potential easement violations. In addition, during 2006 all of the recorded conservation easements associated with permits issued from 2000 to 2006 (a total of 216 sites) were digitized and shape files were provided to GRANIT to update the state's conservation lands layer.

### **Aquatic Resource Mitigation (In-Lieu Fee) Fund**

Effective August 18, 2006 the Aquatic Resource Mitigation (ARM) Fund was established as an additional option for offsetting permanent, unavoidable wetland impacts and on June 20, 2007 the bureau adopted new administrative rules establishing the specific procedures and criteria for the ARM Fund process.

This process allows applicants with smaller projects who cannot find acceptable local mitigation opportunities to provide a payment into the ARM Fund. The justification of need as well as avoidance and minimization of wetland impacts remain threshold issues that a project must meet before any ARM Fund payment would be considered. The bureau tracks the amount of wetland area as well as the function and value losses, the types of wetlands impacted, and the amount of funds collected. These funds are pooled together according to HUC 8 watersheds and will then be used for wetland restoration or the protection of lands within each watershed. (See Appendix B for the 2007 ARM Fund report.)

### **APPEALS OF BUREAU DECISIONS**

Aggrieved parties have the right to appeal Bureau decisions to the New Hampshire Wetlands Council. Over the past five years the Wetlands Council has received 64 appeals of bureau decisions with a majority of the appeals related to shoreline impacts. The table below details the number and type of appeals as well as the ultimate disposition of those appeals.

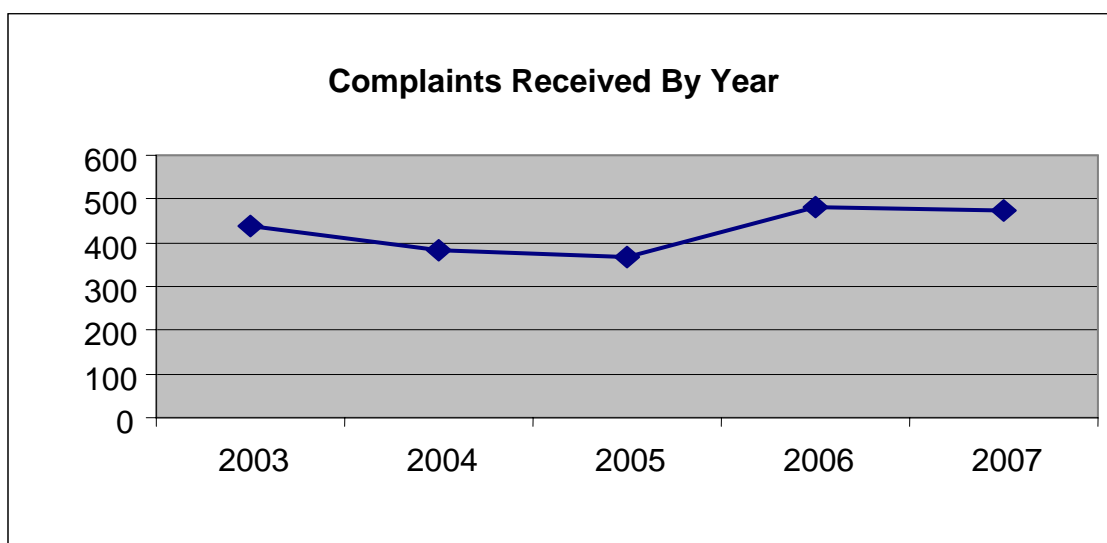
**Wetland Council Appeals 2003-2007**

|                               |    |   |    |    |    |
|-------------------------------|----|---|----|----|----|
| Appeals Upheld                |    | 1 | 3  | 1  |    |
| Appeals Withdrawn             | 3  | 1 | 4  | 3  | 2  |
| Settled w/ DES permit         | 1  |   | 1  | 4  | 4  |
| Bureau Upheld (Appeal denied) | 4  | 6 | 1  | 3  | 1  |
| Appeals Dismissed             | 4  | 1 | 1  | -  | 2  |
| Appeals pending               | -  | - | -  | 2  | 11 |
| Total Appeals                 | 12 | 9 | 10 | 13 | 20 |

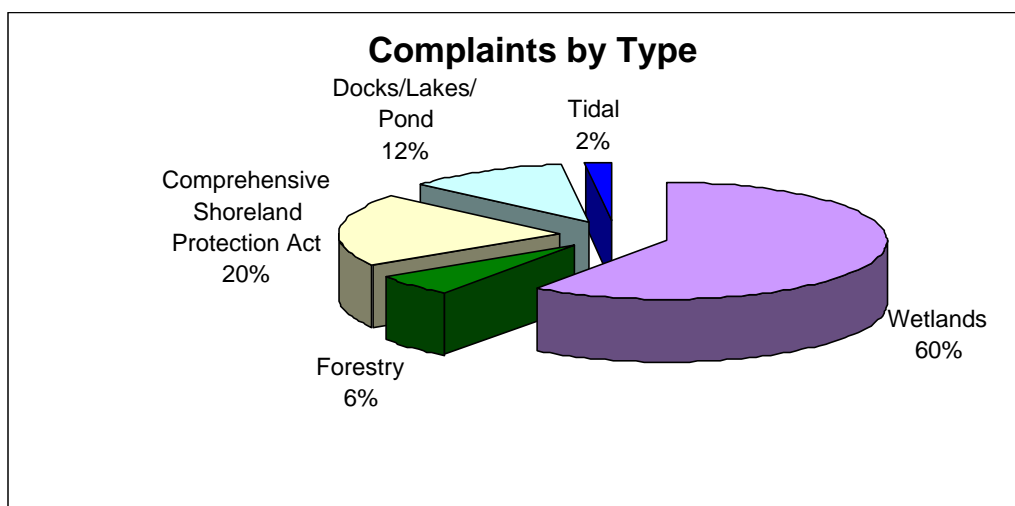
## **COMPLIANCE ACTIVITIES**

### **Complaints Received and Enforcement Actions Taken**

The figure below depicts the total number of complaints received between 2003 and 2007.



Although the number of complaints fluctuates from year to year, the breakdown of the types of complaints remains consistent as depicted in the figure below.



The chart below summarizes Bureau enforcement actions taken from 2003 through 2007.

### **Wetland Enforcement Actions 2003-2007**

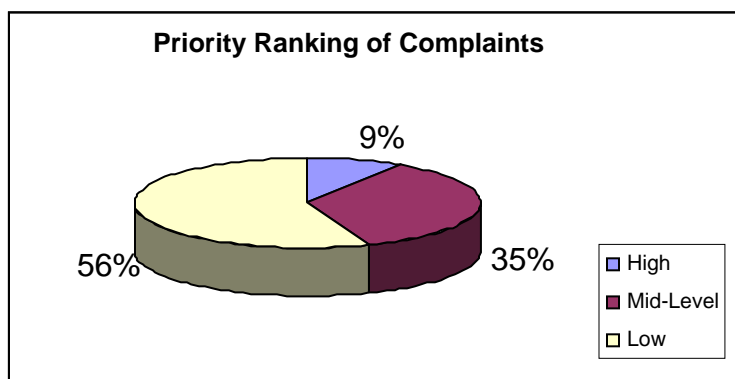
| <b>Enforcement Action Type</b>                     | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> | <b>2007</b> |
|--|-------------|-------------|-------------|-------------|-------------|
| Informal Restoration Requests                      | 55          | 66          | 39          | 72          | 63          |
| Notices of Past Violations                         | 8           | 7           | 8           | 15          | 6           |
| Letters of Deficiency                              | 46          | 56          | 57          | 160         | 113         |
| Administrative Orders                              | 11          | 9           | 16          | 32          | 9           |
| Referrals to the Dept of Justice                   | 3           | 3           | 3           | 6           | 3           |
| Civil Penalties and Administrative Fines Collected | \$219,800   | \$300,650   | \$61,632    | \$161,666   | \$168,660   |

If possible, the bureau attempts to resolve minimal violations informally during, or immediately following, a site inspection. Informal action includes informal restoration requests and Letters of Deficiency. In cases where the impact is larger or more environmentally damaging, where the violator has a prior enforcement history, or if the violator is unwilling to work cooperatively with the bureau to correct the deficiencies, more formal action(s) may be taken in the form of an Administrative Order, referral to the Department of Justice, and/or imposition of administrative or civil penalties.

### **Compliance Program Improvements**

Over the last few years the compliance section has made significant improvements to the compliance process and has reduced its case backlog from approximately 1,800 open cases in July 2002 to approximately 1,000 cases by the end of December 2007.

More than 55 percent of the incoming complaints are initially ranked as the lowest priority and the bureau works with towns to handle these cases at the local level. The bureau is also addressing smaller violations in the field whenever possible thus allowing some violations to be corrected immediately. The figure below depicts the priority ranking of complaints received during the report period:

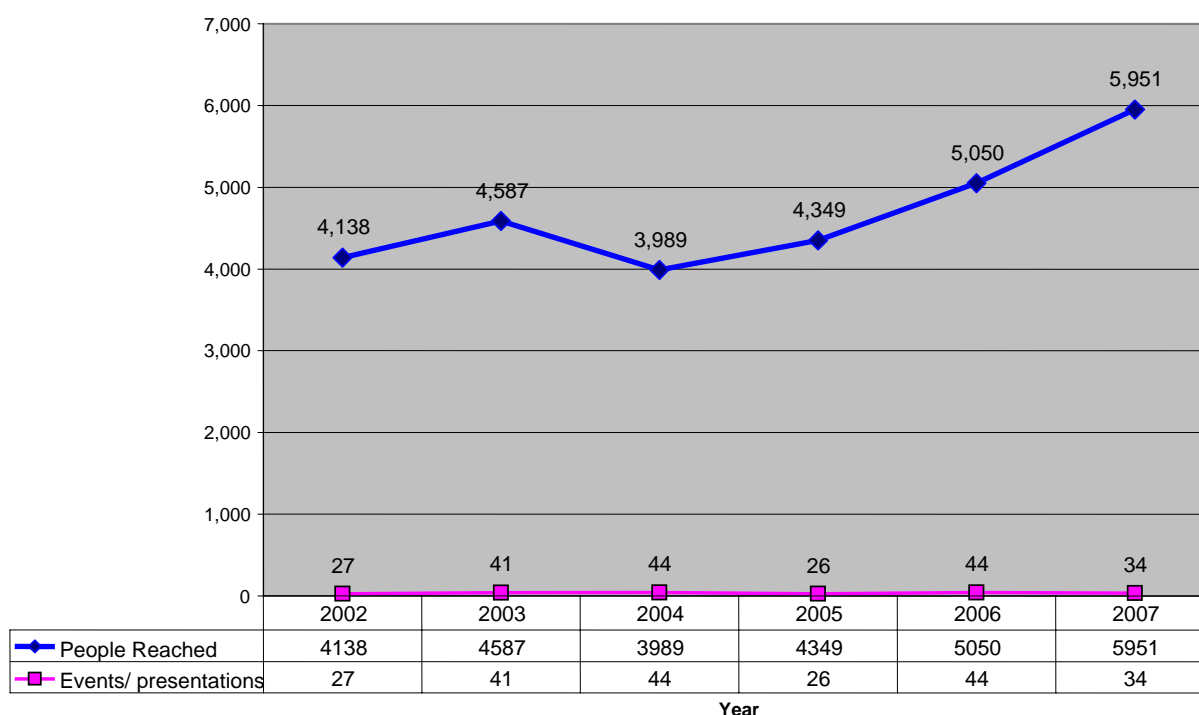




## **Public Education and Outreach**

Each year the Wetlands Program reaches between 3,000 - 5,000 people through 20 - 40 presentations and events given across the state. The chart below provides information about the number of events and people reached through these outreach efforts.

**Wetlands Program Outreach**



One event that has become a standard offering is the annual winter **Land Resource Management Workshops** held at DES. Since 2000, between January and March each winter, the bureau coordinates an all-day multi-topic workshop offered on three dates. These are attended by approximately 400 people involved in land development and protection – engineers, wetland scientists, conservation commissions and other municipal boards and staff.

## **Guidance and Publications**

The bureau provides a number of guidance documents and technical publications that can be accessed through the bureau's web page at [www.des.nh.gov](http://www.des.nh.gov).

## **Inspector of the Day**

The bureau has technical staff on call in the Concord and Pease field office to provide public assistance.

## **Pre- Application Meetings**

The bureau provides an important service by conducting pre-application meetings, where members of the technical staff meet with consultants or landowners on preliminary plans. This

serves to streamline the application review process by assuring that applications submitted for review are complete and accurate.

### **Wetmail Inquiries**

The Bureau devotes significant time to responding to questions that are posed through its e-mail address at [wetmail@des.nh.gov](mailto:wetmail@des.nh.gov).

### **Wetlands Bureau website**

The bureau's website is a major source of information to the general public. It provides information specific to New Hampshire's wetlands program – permit applications, rules and fact sheets – as well as more general information about wetland functions and values and delineation. DES also issues e-news to subscribers (free of charge), which include updates on the Wetlands Bureau weekly decision report.

### **Public Feedback**

The bureau seeks constructive feedback from the public through a questionnaire that is mailed to applicants along with their permit.

Overall the responses have been positive, with an average score of 4 on a scale of 1 to 5. The table below shows the number of response forms received each year.

| <b>Year</b> | <b>Responses Received</b> |
|-------------|---------------------------|
| 2004        | 22                        |
| 2005        | 82                        |
| 2006        | 88                        |

## **SECTION 404 OF THE CLEAN WATER ACT**

New Hampshire has been issued a State Programmatic General Permit (SPGP) by the US Army Corps of Engineers (Corps) in accordance with Section 404 of the Clean Water Act (CWA). The bureau meets monthly with the federal resource agencies, the Corps, USEPA, USFWS and the National Marine Fisheries Service, to review pending applications to assure that issues of common concern are identified early in the permitting process. This process provides the federal agencies an opportunity to audit our permitting decisions to assure compliance with the SPGP requirements. The SPGP was reauthorized in June 2007.

Each year DES reviews about 2,500 applications. Of this total number the Corps issued only nine Individual Permits in 2003; three in 2004; four in 2005; seven in 2006, and seven in 2007. All of the remainder were handled through the SPGP process.

## LEGISLATION AND RULEMAKING

### Proposed Legislation – 2007/2008

|  |
|--|
| HB 1471 – <b>Amending Time Limits for Wetland Permits:</b> Change in applicant response time, appeal filing, and the establishment of an amendment process.                        |
| HB 1579 – <b>Wetland Setbacks:</b> Statewide setback for development from wetlands.  |
| SB 435 – <b>Secondary Impacts to Wetlands:</b> Defines “direct” and “indirect” impact.   |
| SB 140 – <b>ILF Mitigation:</b> relative to acceptance of in-lieu payments for the restoration or creation of wetlands and preservation of upland areas adjacent to wetland areas. |
| HB 2 – <b>Budget:</b> Increased wetland fees and new requirement for quarterly reports.  |

### Rulemaking Initiatives

Over the last few years the bureau has been active with various rulemaking initiatives as summarized below.

|   |
|---|
| <p><b>Routine Roadway Maintenance Activities Exemptions:</b> These adopted rules exempt certain clearly defined routine roadway and railway maintenance activities from the permitting process. This rulemaking was primarily designed to provide municipalities and NHDOT with a mechanism that would allow them to more quickly and easily comply with state requirements relative to maintenance activities. As part of this rulemaking NHDOT and DES worked cooperatively to develop published guidelines titled “Best Management Practices for Routine Roadway Maintenance Activities in New Hampshire,” which are referenced in the new rules.</p>  |
| <p><b>Permit-by-Notification Rules:</b> This rulemaking establishes a permit-by-notification permitting process for certain minimum impact projects that generally result in minimal environmental impact if constructed appropriately. The proposed process allows the applicant to begin construction after a specified number of days unless they receive notice from the department that their project does not comply. The projects included in this rulemaking were selected for this process based upon their limited environmental impact and relative simplicity. This rulemaking is intended to decrease turnaround time for smaller projects and streamline the process while at the same time insuring that the project is conducted with appropriate environmental safeguards resulting in minimal to no environmental damage.</p> |
| <p><b>Wetland Permit Application Requirements:</b> This adopted rulemaking is intended to clarify the bureau’s application completeness requirements. The new rules require more detailed and relevant information, comparable with the federal regulations of the Army Corps of Engineers. These rules also require plans submitted for major or minor projects to be accompanied by a plan stamped by a state certified wetlands scientist.</p>   |
| <p><b>Compensatory Mitigation Rules; Wt 800:</b> These rules extend the concept of compensatory mitigation to all wetlands and surface waters that meet a threshold level of impact. It further establishes specific conditions and criteria for the types of mitigation that would be considered acceptable and clearly defines the requirements for submission.</p>   |
| <p><b>Wetlands Application Fee Rule Wt 505.01:</b> The previous language that referenced the old fee was eliminated and the current rule cross- references the statute the application fee authority, RSA 482-A:3, I.</p>   |
| <p><b>Wetlands Readoption and Changes Wt 100- 800:</b> These rules provide for a new waiver process authorizing the DES Commissioner to issue waivers of RSA 482-A:26,III(b), dwelling statute and of wetlands rules Wt 100-800. These rules also changed the Reconsideration procedures Wt 200, adopted Version 3 of Field Indicators for Identifying Hydric Soils in New England.</p>   |
| <p><b>Wetlands Bureau In Lieu Fee Mitigation Rules:</b> Establish new criteria and process for mitigation overall. Standards for easement holders, mitigation, and sequencing for the in-lieu fee process.</p>  |

|   |
|---|
| <b>Vernal Pool Rules:</b> A definition of vernal pools and requirement for delineation and evaluation.  |
| <b>Fetch; Dock Design; Aquatic Exotic Plant Control:</b> Definition of “design fetch” and amendment to “seasonal dock or seasonal structure.” Rule to exempt hand removal of exotic weeds; boat slips sized to accommodate navigation space; criteria for approval of permanent dock clarified.               |
| <b>Stream Crossing Rules:</b> NH Fish and Game Department has developed Draft Stream Crossings Guidelines. Since September 2007 DES has facilitated a Stream Rules Stakeholder workgroup to adopt the criteria outlined in the Fish and Game manual and to establish criteria and rules for stream crossings. |
| <b>NH Method Workgroup:</b> UNH Cooperative Extension has obtained funds to revise the <i>New Hampshire Method for the Comparative Evaluation of Nontidal Wetlands</i> . DES is participating in this workgroup.  |

## **STAFFING AND FUNDING**

### **Cross-Media/Bureau Coordination**

In an effort to continue integration of staff responsibilities within the Land Resources Management Unit, the Shoreland Protection Act compliance program was merged with the wetlands compliance program. Although the programs regulate different statutes, the resource area is very similar. Consolidating these programs under one umbrella serves to improve consistency and coordination and allows complaints relative to both programs to be investigated by one section rather than two.

### **Bureau Funding**

The bureau pays for its staff through three different funding sources: wetlands application fees, federal grants, and the state general fund. The table below summarizes the revenues expended from these sources for this reporting period (note: the state fiscal year (FY) runs from July 1 of the previous year to June 30 of the year indicated).

|                | <b>Fee</b>     | <b>General</b> | <b>Federal</b> | <b>TOTAL</b>   |
|----------------|----------------|----------------|----------------|----------------|
| <b>FY 2003</b> | \$678,391.20   | \$431,615.34   | \$316,848.95   | \$1,426,855.49 |
| <b>FY 2004</b> | \$741,015.40   | \$326,234.95   | \$297,565.16   | \$1,364,815.50 |
| <b>FY 2005</b> | \$808,574.91   | \$277,384.45   | \$298,173.27   | \$1,384,132.63 |
| <b>FY 2006</b> | \$1,002,479.63 | \$520,119.87   | \$260,731.68   | \$1,897,717.83 |
| <b>FY 2007</b> | \$1,080,387.51 | \$526,280.88   | \$293,049.44   | \$1,899,762.83 |

### **Bureau Staffing**

The wetlands fee account supports 15 full-time bureau staff and pays the per diem for the Wetlands Council public members. In addition, the state general fund supports eight full-time staff and federal grant money supports six full-time staff. The Bureau also employs five part-time staff.

## **Staff Training**

The bureau strives to promote professional development of the staff. This training improves multi-media interaction, documentation, and overall program quality. Four bureau staff are Certified Wetland Scientists and several others are working towards obtaining certification. The following table highlights staff training efforts.

|  |
|--|
| <b>Docks Management Workshop</b> , Wells National Estuarine Research Reserve, Wells, Maine   |
| <b>Wetland Classification</b> , Various locations  |
| <b>Integrated Riverine Wetlands, Streams, Riparian Areas and Floodplains in Watershed Contexts</b> , Association of State Wetland Managers |
| <b>Hydric Soils and Advanced Hydric Soils</b> , University of Massachusetts  |
| <b>Wetland Hydrology Parameter: Recognition and Definition</b> , University of New Hampshire   |
| <b>Delineation of Disturbed and Problem Areas</b> , NEWIPCC  |
| <b>Army Corps Wetland Delineation Training</b> , UNH   |
| <b>Identification of NH Trees and Shrubs</b> , UNH   |
| <b>Ferns and Fern Allies</b> , NH Association of Natural Resource Scientists (NHANRS)  |
| <b>Advanced Land Conservation Works</b>  |
| <b>Vernal Pool Workshop</b> , NHANRS   |
| <b>Grasses, Sedges, and Rushes</b> , UNH   |
| <b>Coastal Wetlands</b> , NHANRS   |
| <b>Creative Problem Solving</b> , NH Dept of Personnel, Training (DOP)   |
| <b>Understanding and Valuing Differences</b> (DOP)   |
| <b>Introduction to Supervision</b> (DOP)   |
| <b>Judicial training in Administrative Investigations</b> , DOJ  |
| <b>Data Recovery, Computer Tech</b> , Don Patch  |

## **LOOKING AHEAD**

In September, 2007 DES formally launched an initiative to improve the Wetlands Program. This initiative is intended to identify and address areas for program improvement. To date the following improvements have been made or are well underway.

- A database management program has been developed that allows the bureau to assess backlog, productivity, and workload allocation on a daily basis.
- A manager's module is being developed for the database to stream line reporting to the legislature, EPA, and others.
- Requests for Reconsideration of permit decisions are now being managed by a single individual to improve efficiency.
- Short-term database system improvements have been implemented to improve application tracking.
- Cross training of staff across three Land Resource Management Program Bureaus has been implemented to develop efficiencies and consistency in permit application reviews, site inspection activities, and enforcement actions
- Permit application forms and application completeness checklist are being revised so as to improve permit application quality.

**APPENDIX A**  
**QUARTERLY REPORTS TO THE LEGISLATURE**

**FIRST QUARTER – FY 2008**

October 30, 2007

The Honorable Judith T. Spang, Chair  
House Resources Recreation and  
Development Committee  
Room 305, LOB  
Concord, NH 03301

The Honorable Martha Fuller Clark, Chair  
Senate Energy, Environment and  
Economic Development Committee  
Room 102, LOB  
Concord, NH 03301

The Honorable Marjorie K. Smith, Chair  
House Finance Committee  
Room 210-211, LOB  
Concord, NH 03301

The Honorable Lou D'Allesandro, Chair  
Senate Finance Committee  
Room 100, State House  
Concord, NH 03301

**Subject:** Wetlands Program Quarterly Report: First Quarter, Fiscal Year 2007

Dear Chairmen Spang, Smith, Fuller Clark and D'Allesandro:

This letter provides the first Wetlands Program Quarterly Report, as required by RSA 482-A: I (e), as enacted into law as part of House Bill 2 in June 2007<sup>1</sup>. This report is for the period from July 1, 2007 through September 30, 2007, the First Quarter of State Fiscal Year 2008. The report summarizes the financial status of the Wetlands Fee Account, provides an overview of the current permit application review performance, and also describes the Wetlands Program Improvement Initiative that was started during this quarter.

**Wetlands Fee Account Financial Status**

The Wetlands Fee Account (010-044-3855) is a dedicated, non-lapsing account supported by wetlands permit application revenues and fines. On June 30, 2007, this account had a negative balance of \$71,126 because expenses had exceeded revenues during FY 2007, as predicted earlier in the year. This was addressed by the Legislature through the Fiscal Year 2008-09 budget process by enacting into law HB 2, Section 262:32 which doubled the wetlands application fees by amending to RSA 482-A:3, I. For the First Quarter of SFY 2008, as a result of this fee increase, wetlands fee account revenues were \$353,282 as compared with quarterly expenses of \$244,059. Restoration of a positive cash flow for the quarter resulted in a positive account balance of \$38,097 on September 30, 2007.

**Wetlands Bureau Permit Application Processing**

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<sup>1</sup> HB 2 contains the following language in Section 263:32: "Amend RSA 482-A:3, I to read as follows:..... (e) Beginning October 1, 2007, and each quarter of the fiscal year thereafter, the department shall submit a quarterly report to the house and senate finance committees, the house resources, recreation, and economic development committee, and the senate energy, environment, and economic development committee relative to administration of the wetlands fees permit process established by this section."

For the period from July 1 to September 30, 2007, approximately 680 complete wetlands permit applications and notifications<sup>2</sup> were received (an average of about 227/month) and approximately 714 wetlands permit decisions including notifications<sup>2</sup> (an average of about 238/month) were issued.

On September 30, 2007, approximately 213 wetlands permit applications (including the categories of standard dredge and fill, minimum impact, permit by notification, and agricultural)<sup>3</sup> that had been deemed administratively complete were in queue for review. For applications in queue, the backlog age<sup>4</sup> was as follows:

- 124 (58.2 %) were less than 30 days old
- 55 ( 25.8 %) were between 31 to 60 days old
- 31 (14.6 %) were between 61 to 74 days old
- 3 (1.4 %) applications were between 75 to 105 days old.
- No applications were older than 105 days.

Over 84% of permit applications were less than 60 days old and virtually all (98.6%) were less than 75 days old. Three (1.4%) were over 75 days and none was older than 105 days. Of these three, two had exceeded the 75 day statutory deadline<sup>5</sup> and one was still within the applicable 105 day deadline for review. All applications over 75 days old that exceeded statutory deadlines were either processed within a very short period or were being held with the consent of the applicant until additional information could be submitted by the applicant. For permit applications for which statutory time frames for review have expired, applications that are not processed within 75 days are “deemed approved” pursuant to a statutory provision. This provision was specifically highlighted in the Legislative Budget Assistant Audit Report (discussed below) as problematic and meriting amendment or repeal by the legislature. In order to ensure that all applications are processed within the applicable time frames specified by statute, DES continues to work to tighten the permit review time frames through an overall program improvement initiative that is also discussed below.

### **Wetlands Program Improvement Initiative**

In August 2007, the Office of the Legislative Budget Assistant (LBA) completed an audit of the DES Alteration of Terrain (AoT) and Wetlands Programs and submitted an audit report to the Legislative Fiscal Committee. The LBA concluded in part that, “DES must be more efficient, effective and equitable in reviewing alteration of terrain and wetlands permit applications,” but also cited a Wetlands Council member as stating that, “the quality of the Bureau’s permits is excellent.” The LBA made 19 specific recommendations for program improvements that generally fall into three broad categories: statutes and regulations that require change to correct inconsistencies; data management problems attributable primarily to an outdated database system, and; areas for program management improvement. In a letter to the Fiscal Committee dated August 13, 2007, that was included as an appendix to the audit report, DES concurred with the report conclusions and committed to the implementation of the audit recommendations.

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<sup>2</sup> The total wetlands permit applications and decisions include applications for the permit categories of standard and minimum impact expedited as well as permit by notification, and “other” notifications for roadway, trails, forestry, seasonal docks, and gold dredge. The number of “other” notifications ranged from about 50 to 100 per month for this period.

<sup>3</sup> This wetlands permit application backlog includes the project types of standard, minimum impact, permit by notification, and agriculture. This backlog does not include “other” notifications for roadways, trails, forestry, seasonal docks, and gold dredge that are submitted to DES but do not typically require review by permit application review staff to process.

<sup>4</sup> “Backlog age,” for a specific application, is a measure of the length of time from when a complete application was submitted to DES to the specified date. This is an indicator of the overall timeliness of permit application reviews.

<sup>5</sup> One of these three had a statutory review deadline of 105 days that had not yet been reached. The other two had 75 day statutory review deadlines. Two were delayed due to an unexpected week-long illness of an application reviewer in September; these were “deemed approved” by statute but were both processed through standard permitting procedures and permits were subsequently issued for both of them.

In September, DES formally launched an initiative to improve the Wetlands Program, in partnership with the Wetlands Council. This initiative is intended to not only address the findings and recommendations of the LBA Audit Report but also to identify and other areas for program improvements and to implement changes intended to address those concerns. This initiative will proceed as follows:

- DES will perform an internal evaluation of Wetlands Bureau procedures, processes and documents to identify areas that need improvement and develop possible solutions. The focus will be on improving customer service by making improvements in the overall program, permitting and data management.
- DES will provide opportunity for stakeholder and public input on our proposed improvements and solicit ideas on how the wetlands program might be further improved. Meetings are now being scheduled with stakeholder groups around the state including contractors, wetlands scientists and environmental groups. There will then be public meetings to provide the general public with an opportunity to comment on the improvement plan developed by DES with these other stakeholders and the Wetlands Council.

We expect that this process will result in the development of action items focused on areas for improved program management and amendments to wetlands statutes and regulations for program clarification.

As the Wetlands Program Improvement Initiative develops, any immediate opportunities for improvement that are identified will be implemented. To date, the following improvements have been made or are well underway:

- Requests for reconsideration of permit decisions are now being handled by a single individual to improve efficiency.
- Workload analysis is regularly occurring to shift work to permit writers across permit regions or other programs when workloads become unbalanced. Also, some short term data base management system improvements are being developed as part of this effort to improve application tracking.
- In early December, projects with minor impacts including permits by notification (PBNs) and minimum impact expedited applications will be handled by regional Subsurface Bureau plan reviewers. Cross training of Subsurface staff is currently ongoing to implement this change. This will enable Wetlands Bureau permit writers to focus more time on the larger projects.
- Revisions to wetlands permit application forms and the development of an application completeness checklist for use by applicants are being finalized. These changes are intended to improve permit application quality, thus reducing processing time and the need for requests for more information to make applications complete.

Measurable improvements to the Wetlands Program should become evident as a result of these and other program enhancements.

We also expect that relatively minor statutory changes focused primarily on permit review application timing inconsistencies and some other concerns raised in the LBA Audit Report will be proposed during the 2008 Legislative Session. Possible changes are currently being discussed with key members of the Legislature as well as other stakeholders. Major changes to RSA 482-A will likely not be recommended by DES during the 2008 legislative session because our analysis will not yet be complete.

Future quarterly reports will also provide updates on the results of the Wetlands Program Improvement Initiative.



Thank you for your consideration. If you have any questions or would like additional information, please do not hesitate to contact me.

Sincerely yours,

Thomas S. Burack  
Commissioner

**SECOND QUARTER – FY 2008**



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**  
February 5, 2008

The Honorable Judith T. Spang, Chair  
House Resources Recreation and  
Development Committee  
Room 305, LOB  
Concord, NH 03301

The Honorable Martha Fuller Clark, Chair  
Senate Energy, Environment and  
Economic Development Committee  
Room 102, LOB  
Concord, NH 03301

The Honorable Marjorie K. Smith, Chair  
House Finance Committee  
Room 210-211, LOB  
Concord, NH 03301

The Honorable Lou D'Allesandro, Chair  
Senate Finance Committee  
Room 100, State House  
Concord, NH 03301

**Subject:** Wetlands Program Quarterly Report: Second Quarter, Fiscal Year 2008

Dear Chairmen Spang, Smith, Fuller Clark and D'Allesandro:

This letter provides the Wetlands Program Quarterly Report, as required by RSA 482-A: I (e), as enacted into law as part of House Bill 2 in June 2007<sup>1</sup>. This report is for the period from October 1, 2007 through December 31, 2007, the Second Quarter of State Fiscal Year 2008. The report summarizes the financial status of the Wetlands Fee Account, provides an overview of the current permit application review performance, and also describes the Wetlands Program Improvement Initiative that was started during the last quarter.

**Wetlands Fee Account Financial Status**

The Wetlands Fee Account (010-044-3855) is a dedicated, non-lapsing account supported by wetlands permit application revenues and fines. Due to a fee increase that was authorized last legislative session, this account realized a positive cash flow during the second quarter. On December 31, 2007, this account had a balance of \$92,009. If future economic conditions are favorable, and application numbers remain steady, then this account should remain stable.

<sup>1</sup> HB 2 contains the following language in Section 263:32: "Amend RSA 482-A:3, I to read as follows:..... (e) Beginning October 1, 2007, and each quarter of the fiscal year thereafter, the department shall submit a quarterly report to the house and senate finance committees, the house resources, recreation, and economic development committee, and the senate energy, environment, and economic development committee relative to administration of the wetlands fees permit process established by this section."

The Honorable Judith T. Spang  
 The Honorable Marjorie K. Smith  
 The Honorable Martha Fuller Clark  
 The Honorable Lou D'Allesandro

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### **Wetlands Bureau Permit Application Processing**

For the period from October 1 to December 31, 2007, approximately 593 complete wetlands permit applications and notifications<sup>2</sup> were received (an average of about 198/month) and approximately 804 wetlands permit decisions including notifications<sup>2</sup> (an average of about 268/month) were issued.

On December 31, 2007, approximately 147 wetlands permit applications (including the categories of standard dredge and fill, minimum impact, permit by notification, and agricultural)<sup>3</sup> that had been deemed administratively complete were in queue for review. For applications in queue, the backlog age<sup>4</sup> was as follows:

- 89 (60.6%) were less than 30 days old
- 45 (30.6%) were between 31 to 60 days old
- 13 (8.8%) were between 61 to 74 days old
- No applications were between 75 to 105 days old.
- One application was older than 105 days by prior agreement with the applicant.

Over 91% of permit applications were less than 60 days old and all were less than 75 days old. DES continues to work to tighten the permit review times through on-going program management and improvements.

### **Wetlands Program Improvement Initiative**

In September, 2007, DES formally launched an initiative to improve the Wetlands Program, in partnership with the Wetlands Council, which has continued through this quarter. This initiative is intended to not only address the findings and recommendations of the LBA Audit Report but also to identify other areas for program improvements and to implement changes intended to address those concerns. This initiative is proceeding as follows:

- DES has initiated an internal evaluation of Wetlands Bureau procedures, processes and documents to identify areas that need improvement and develop possible solutions. The focus is on improving customer service by making

<sup>2</sup> The total wetlands permit applications and decisions include applications for the permit categories of standard and minimum impact expedited as well as permit by notification, and "other" notifications for roadway, trails, forestry, seasonal docks, and gold dredge. The number of "other" notifications ranged from about 50 to 100 per month for this period.

<sup>3</sup> This wetlands permit application backlog includes the project types of standard, minimum impact, permit by notification, and agriculture. This backlog does not include "other" notifications for roadways, trails, forestry, seasonal docks, and gold dredge that are submitted to DES but do not typically require review by permit application review staff to process. This backlog also does not include responses to DES requests for more information which are reviewed within 30 days of receipt.

<sup>4</sup> "Backlog age," for a specific application, is a measure of the length of time from when a complete application was submitted to DES to the specified date. This is an indicator of the overall timeliness of permit application reviews.

The Honorable Judith T. Spang  
 The Honorable Marjorie K. Smith  
 The Honorable Martha Fuller Clark  
 The Honorable Lou D'Allesandro

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February 5, 2008

improvements in the overall program, permitting and data management. This effort is ongoing and, as noted below, has already identified areas for improvement that are being implemented.

- In 2008, DES will continue to provide opportunity for stakeholder and public input on our proposed improvements and solicit ideas on how the wetlands program might be further improved. Meetings have been and will continue to be held with various stakeholder groups around the state including but not limited to contractors, wetlands scientists and environmental groups. We also anticipate providing an opportunity for the general public to comment on the improvement plan developed by DES with these other stakeholders and the Wetlands Council.

We expect that this process will result in the development of additional action items focused on areas for improved program management and amendments to wetlands statutes and regulations for program clarification.

As the Wetlands Program Improvement Initiative develops, any immediate opportunities for improvement that are identified will be implemented. To date, the following improvements have been made or are well underway:

- Requests for reconsideration of permit decisions are now being handled by a single individual to improve efficiency.
- Workload analysis is regularly occurring to shift work to permit writers across permit regions or other programs when workloads become unbalanced. Also, some short term data base management system improvements have been implemented to improve application tracking.
- Cross training of staff across three Land Resource Management Program Bureaus is ongoing to develop efficiencies and consistency in site inspections and permit application reviews. This will enable Wetlands Bureau, as well as other program, permit writers to focus more time on the larger projects.
- Revisions to wetlands permit application forms and the development of an application completeness checklist for use by applicants have been completed. These improvements will improve permit application quality, thus reducing processing time and the need for requests for more information to make applications complete.

Measurable improvements to the Wetlands Program will continue to occur as a result of these and other program enhancements.

In addition, during the 2008 Legislative Session, HB 1471 has been introduced to make minor statutory changes to address permit review application timing inconsistencies and some other concerns raised in the Legislative Budget Assistant Audit Report of August 2007 on the wetlands program. We urge enactment of HB 1471. Additional legislative changes may be necessary in future sessions as we continue to examine the program and identify other areas of opportunity for program improvements.

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February 5, 2008

The Honorable Judith T. Spang  
The Honorable Marjorie K. Smith  
The Honorable Martha Fuller Clark  
The Honorable Lou D'Allesandro

Future quarterly reports will also provide updates on the results of the Wetlands Program Improvement Initiative.

Thank you for your consideration. If you have any questions or would like additional information, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in cursive script, reading "Thomas S. Burack".

Thomas S. Burack  
Commissioner

cc: Harry T. Stewart, DES  
Rene Pelletier, DES  
Collis Adams, DES  
Ted Diers, DES

## **APPENDIX B**

### **2007 ANNUAL REPORT – AQUATIC RESOURCES MITIGATION FUND**

#### **2007 REPORT OF THE ACTIVITY OF THE NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES AQUATIC RESOURCE MITIGATION FUND PROGRAM**

**March 20, 2008**

#### **I. INTRODUCTION**

The NHDES Wetlands Program (DES) has reported that since the 18<sup>th</sup> century, about one-tenth of the nontidal wetlands have been destroyed in the state. During the high growth period between 2001 and 2006, approximately 900 acres of wetlands were filled or otherwise impacted due to permitted activities. In March 2004, the DES wetlands program adopted a set of mitigation rules that establish what is necessary for an applicant to provide for wetland compensation. The rules spell out ratios for wetland creation, restoration and upland preservation relative to the type of wetland lost through the development. During the 2006 legislative session, the General Court enacted Senate Bill 140, known as Aquatic Resource Compensatory Mitigation. Chapter 313, Laws of 2006 has now been codified at RSA 482-A:28 through RSA 482-A:33. The law became effective on August 18, 2006 and the DES adopted rules for its operation on June 20, 2007 [www.des.state.nh.us/rules/desadmin\\_list.htm](http://www.des.state.nh.us/rules/desadmin_list.htm). (see Env Wt 100-800).

The ARM Fund has been created as one of several compensatory mitigation options available to permittees for impacts to wetlands and other aquatic resources. This mitigation option is available for use after avoidance and minimization of impacts to these aquatic resources has been achieved. Although compensatory mitigation is often a requirement in permits, use of the ARM Fund can only occur after the applicant has reviewed other available forms of mitigation in the vicinity and local community. The ARM Fund seeks “no net loss” of aquatic resource acreage and functions using a watershed approach. See Figure 1 for the Hydrologic Unit Code 8 (HUC 8) display of the watersheds that will be used for collection of funds.

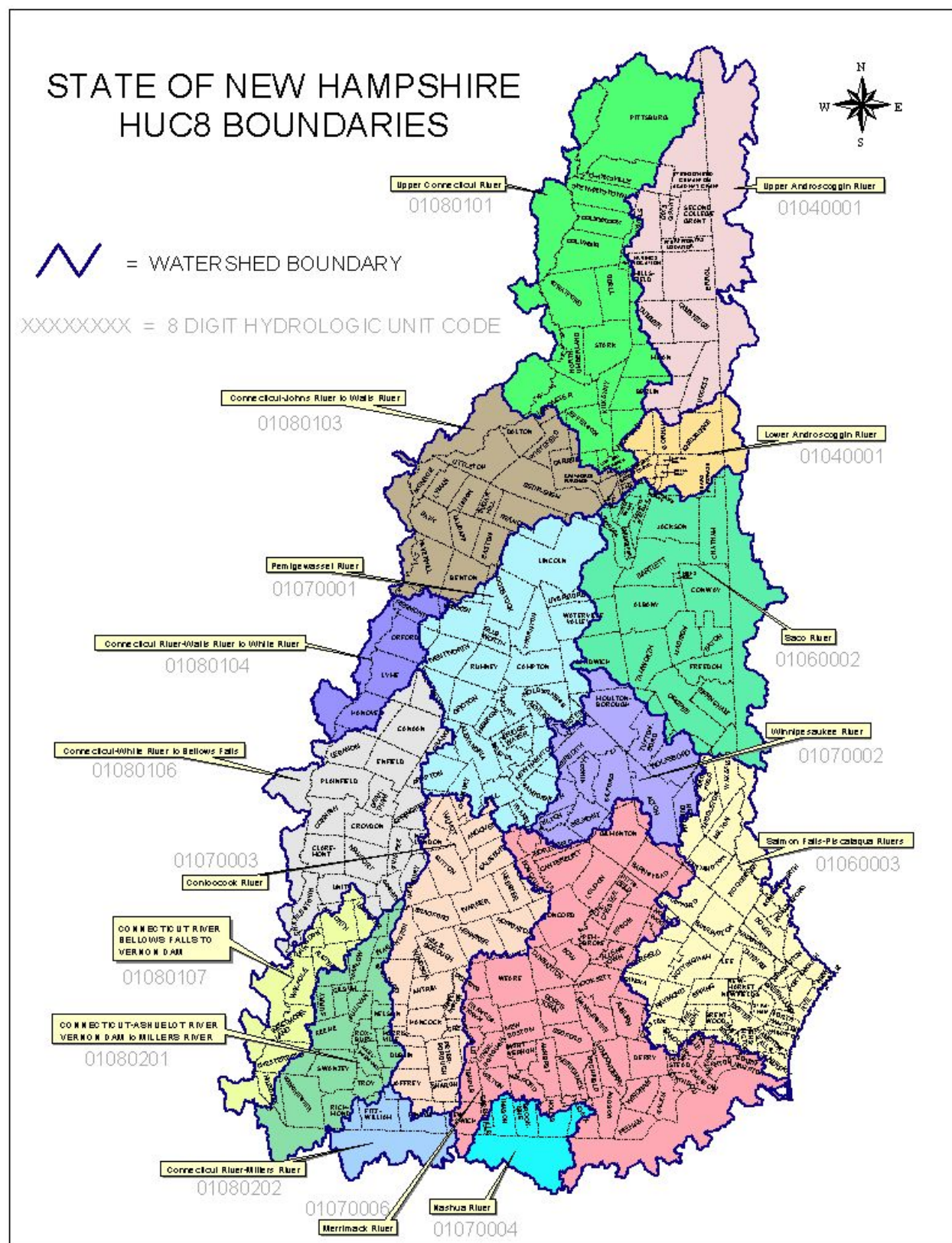
The DES regulations allow for the funds in each watershed account to accumulate for two years after the first deposit into each account. After two years have lapsed, the funds will be advertised in a request for proposals for disbursal. Since there has not been any release of funds to report, this report outlines the wetland impacts, a summary of wetland functions and values lost, and accruals associated with the DES ARM Fund. The purpose of this report is to advise the Public of the status of the ARM Fund and to address items referenced in the DES regulations, Env-Wt 807.19, specifically:

- (1) A summary that details the sources of all payments received and all fund expenditures on a per-watershed basis.

Future reports will include the following additional details:

- (2) A description of each project funded and information on the progress or completion of those projects;
  - (3) The acreage and type of aquatic resource restored, created, or otherwise protected in each HUC 8 watershed by the projects described pursuant to (b), above; and
  - (4) The functions gained by the projects described pursuant to (b), above.
- The last section of this report highlights program achievements made by the mitigation program over the 2007 calendar year.

**FIGURE 1. STATE OF NEW HAMPSHIRE HYDROLOGIC UNIT CODE 8  
BOUNDARIES**





## **II. WETLAND LOSS AND CONTRIBUTIONS RECEIVED**

Since the ARM Fund's inception in August of 2006, nine projects have used the option as mitigation for permitted wetland impacts. The nine permitted projects resulted in **4.75** acres of wetland impacts over the 15 months of operation. For these wetland impacts, the fund accrued contributions totaling **\$580,544.44**. The impacts, contributions, and functions and values impacted by projects that generated funds are shown in Table 1 below.

**TABLE 1: ARM FUND REVENUES, IMPACTS AND FUNCTION AND VALUES LOST  
CALENDAR YEAR 2006-2007**

| <b>PROJECT TOWN</b> | <b>HUC 8 WATERSHED</b>      | <b>IMPACTS (in acres)</b> | <b>FUNCTIONS AND VALUES LOST</b>  | <b>REVENUES</b>     |
|---------------------|-----------------------------|---------------------------|---|---------------------|
| Pittsburg           | Upper CT River              | 0.99                      | Wildlife habitat, Uniqueness as it drains to Designated River - CT River    | \$103,226.00        |
| Bethlehem           | CT River-Johns-Waits Rivers | 0.34                      | Wildlife habitat, Uniqueness as high elevation 1080-1220'                   | \$14,904.44         |
| Littleton           | CT River-Johns-Waits Rivers | 0.27                      | Wildlife habitat  | \$29,904.00         |
| Tilton              | Winnepesaukee River         | 0.59                      | Limited overall - some sed/toxicant retention                               | \$85,108.00         |
| Moultonboro         | Winnepesaukee River         | 0.48                      | Floodflow alteration, wildlife habitat, sed/tox retention                   | \$74,141.00         |
| Londonderry         | Merrimack River             | 0.4                       | Stormwater detention of runoff from existing site                           | \$52,394.00         |
| Hooksett            | Merrimack River             | 0.36                      | Floodflow alteration, wildlife habitat, limited groundwater rechg/discharge | \$61,153.00         |
| Hooksett            | Merrimack River             | 0.58                      | Groundwater recharge/discharge  | \$77,636.00         |
| Candia              | Merrimack River             | 0.72                      | Stormwater detention, sed/tox retention                                     | \$82,438.00         |
|                     |                             | <b>4.75</b>               |   | <b>\$580,544.44</b> |

Four additional projects for which DES has determined an ARM Fund payment is acceptable are included in Table 2. These four projects have the potential of an additional **\$199,846.56** to be paid into the fund.



**TABLE 2: POTENTIAL ARM FUND REVENUES, IMPACTS AND FUNCTION AND VALUES LOST IN CALENDAR YEAR 2008**

| <b>PROJECT TOWN</b> | <b>HUC 8 WATERSHED</b> | <b>IMPACTS (in acres)</b> | <b>FUNCTIONS AND VALUES LOST</b>   | <b>REVENUES</b>     |
|---------------------|------------------------|---------------------------|--|---------------------|
| Goffstown           | Merrimack River        | 0.34                      | Floodflow alteration, groundwater rechg/dischg, wildlife habitat, production export          | \$60,724.72         |
| Lincoln             | Pemigewasset River     | 0.36                      | Groundwater recharge/discharge   | \$30,122.14         |
| Lincoln             | Pemigewasset River     | 0.36                      | Groundwater recharge/discharge   | \$30,122.14         |
| Woodstock           | Pemigewasset River     | 0.58                      | Wildlife habitat, limited sediment/tox retention, uniqueness - proximity to designated river | \$37,280.06         |
| Auburn              | Merrimack River        | 0.4                       | Wildlife habitat, groundwater discharge  | \$71,719.64         |
| <b>4</b>            |                        | <b>1.70</b>               |  | <b>\$199,846.56</b> |

## **II. DES MITIGATION PROGRAM ACHIEVEMENTS IN 2007**

In the first year of operation, the ARM Fund program has made huge progress in preparing for the release and use of collected funds. The following items summarize program achievements to date.

- Pursuant to RSA 482-A:32, an ARM Fund Site Selection Committee has been established for the purpose of identifying projects to be funded. The committee consists of the following members: A single representative from the Department of Environmental Services, Fish and Game Department, the Office of Energy and Planning, and the Department of Resources and Economic Development will be appointed by the respective commissioner or director of each such department or office. Four members of the public, appointed by the Governor and Executive Council for a term of three years will also serve on the committee. These members represent each of the following organizations: the New Hampshire Association of Conservation Commissions, the New Hampshire Association of Natural Resource Scientists, The Nature Conservancy, and the Society for the Protection of New Hampshire Forests.
- New Mitigation Agreement Form (attached) has been developed to streamline the process for conceptual stages of mitigation proposals developed for wetland applications.
- New DES Mitigation Information and Checklist (attached) has been developed and is published on the website.
- Program was awarded an EPA Development grant to develop a strategy for identifying wetland restoration and land protection projects for funds from the Aquatic Resource Mitigation fund. The grant will be completed in December 2008 so stakeholders in the Merrimack River HUC 8 watershed can use

the information and apply for ARM funds available in January 2009. The strategy will then be used in other watersheds for identification and use by the public.

- A Memorandum of Understanding between the DES and U.S. Army Corps of Engineers, New England District was written to establish the procedures and guidelines between the permitting agencies and compensatory mitigation requirements and is being finalized for agency signatures.
- DES has developed a draft ARM Fund application packet;
- DES has met with the DES Web Design Team and has developed a comprehensive fact sheet (attached) and other attachments for the development of a new Mitigation webpage. Final formatting of pages is underway and DES anticipates the website to be up and running within the coming months.

### **III. CONCLUSION**

The above projects demonstrate that the ARM Fund has made significant progress toward accomplishing its goal of providing watershed-based mitigation for permitted impacts. The DES recognizes that the fund is in an advantageous position to bring significant mitigation projects to completion. The new Aquatic Resource Mitigation program offers a chance for municipalities to accomplish high priority local conservation goals; a mechanism for developers to proceed with projects once not viable because no compensatory wetland mitigation was practicable; and an opportunity for the state to accomplish projects with greater conservation value than can be achieved through conventional compensatory wetland mitigation. For additional information, please contact Lori L. Sommer at (603)271-4059 or [lori.sommer@des.nh.gov](mailto:lori.sommer@des.nh.gov).

## **APPENDIX C**

### **NEW HAMPSHIRE FLOODING EVENTS**

#### **Cold River Flood - 2005**

During October 2005, southwestern New Hampshire experienced one of the worst floods in the state's history. The Cold River and Warren Brook watersheds were the most severely damaged. In addition to the tragic loss of life and property, the physical structure of the Cold River and Warren Brook were significantly altered. Prior to and during the floods, four designated DES wetlands staff were on-call to respond to public questions, provide technical assistance, and to issue emergency authorizations. In 2005, DES Wetlands Bureau issued a total of 82 emergency authorizations, 62 were in response to the October floods. Many of these emergencies required monitoring and follow through by DES. DES has also taken an active role in working with NHDOT, FEMA, NRCS, and other resource agencies in the development of a long-term restoration plan for the Cold River.

#### **Mother's Day Flood - 2006**

From May 13 to 17, 2006, central and southern New Hampshire experienced severe flooding caused by more than 14 inches of rainfall in the region. As a result of the flood damage, a presidential disaster declaration was made on May 25, 2006, for seven counties: Rockingham, Hillsborough, Strafford, Merrimack, Belknap, Carroll, and Grafton. The peak discharges during the May 2006 flood were the largest ever recorded in New Hampshire and exceeded a 100-year recurrence interval. The most severe flooding occurred in Rockingham, Strafford, Merrimack, and eastern and northern Hillsborough Counties.

#### **Patriot's Day Flood - 2007**

From April 16 to 18, 2007 central and southeastern New Hampshire experienced severe flooding due to more than 7 inches of rainfall from a storm that stalled off of the New England coast. As a result of the flooding, a Presidential disaster was declared on April 27, 2007. Disaster declarations were made in Grafton, Hillsborough, Merrimack, Rockingham, Strafford and Belknap counties.

The peak discharges during the flood were the greatest ever recorded in many areas of New Hampshire exceeding 100-year recurrence interval. The most severe flooding occurred in Rockingham, Strafford, Merrimack and Hillsborough counties.

## NHDES PRELIMINARY MITIGATION AGREEMENT FORM

I, \_\_\_\_\_, ("Applicant"), by \_\_\_\_\_ ("Authorized Agent"),  
(Print Applicant name legibly) (Print Authorized Agent name legibly)

and the Department of Environmental Services ("DES") hereby agree to the process described below to streamline the review of Applicant's application for a permit under RSA 482-A.

A **Preliminary Mitigation** package is being submitted with the Standard Dredge and Fill Application in accordance with Env-Wt 501.06 and Env-Wt 800. The package contains the information required as outlined in the DES Compensatory Mitigation Checklist.

The preliminary mitigation proposal type is (please check one or more types):

- ☐ Wetland Restoration
- ☐ Upland Buffer Preservation
- ☐ Wetland Creation
- ☐ Payment into the Aquatic Resource Mitigation Fund following consideration of the three options noted above and determining them to not be feasible for complete mitigation.

By executing this agreement, DES agrees to accept Applicant's **Preliminary Mitigation** proposal for purposes of determining whether the application is administratively complete. However, the application will not be deemed complete if other basic information is missing, such as the required plans, attachments, and/or fees.

Applicant agrees to submit the final mitigation plans to DES for review by \_\_\_\_\_.  
Date

Applicant and DES, by mutual agreement authorized under RSA 482-A:3, XIV(c)(3), agree to extend the response time for DES to review the final mitigation proposal, once received, to 60 days from receipt of the final mitigation plans.

The applicant agrees that if the information required under Env Wt 800 is not submitted by the date specified in this agreement or 120 days from a Request For More Information by DES, the application will be denied.

I, \_\_\_ Applicant \_\_\_ Authorized Agent [check one] hereby certify that the information submitted with the application meets the **Preliminary Mitigation** requirements for the DES Wetlands Bureau to understand the nature and appropriateness of the proposed mitigation.

\_\_\_\_\_  
Signature of Applicant or Authorized Agent

\_\_\_\_\_  
Date

The NHDES Wetlands Bureau agrees, by the signature below, that the information submitted meets the **Preliminary Mitigation** requirements, and that technical review of the mitigation proposal will not commence until the required items are submitted before or on the date noted above.

\_\_\_\_\_  
NHDES Wetland Mitigation Coordinator

\_\_\_\_\_  
Date



DEPARTMENT OF ENVIRONMENTAL SERVICES  
WETLANDS BUREAU

29 Hazen Drive PO Box 95  
Concord, NH 03302-0095

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web site: [www.des.nh.gov](http://www.des.nh.gov) email: [wetmail@des.nh.gov](mailto:wetmail@des.nh.gov)



## Compensatory Mitigation Information and Checklist

For permanent impacts that will remain after avoidance and minimization measures have been addressed, the applicant shall submit a compensatory mitigation proposal in accordance with Chapter Env-Wt 800, unless exempted by Env-Wt 302.03(c). Criteria in Env-Wt 501.02(a) provide details about information to be submitted with your application.

**In general, an applicant is required to provide compensatory mitigation if the project meets any of the following criteria:**

- The project will result in 10,000 square feet or greater of permanent wetland impact.
- The project will alter the course of or disturb 200 or more linear feet of an intermittent or perennial nontidal stream or river channel or its banks. For intermittent streams, the distance shall be measured along the thread of the channel. For perennial streams or rivers, the total disturbance shall be calculated by summing the lengths of disturbance to the channel and each of the banks.
- The project involves construction of a pond with more than 20,000 square feet of impact in a wetland or surface water.
- The project involves only the installation of accessory docking structures or the construction of new shoreline structures and breakwaters, or includes such work in combination with other qualifying criteria, provided the resulting dock surface area of all new shoreline structures on the frontage is less than 2,000 square feet.

**Compensatory mitigation is required to replace or protect wetland functions and values that are impacted by the project. Please demonstrate how you have reviewed all of the following four options:**

- 1) **Upland Buffer Preservation** means an area of land that is contiguous to an aquatic resource and contributes to the functions and values of that resource. For this to be acceptable by DES, the land must be protected through a conservation easement or transfer of fee simple ownership to an acceptable agency or organization. Please demonstrate that the following organizations have been consulted that include state natural resource agencies, land trusts, watershed associations, and regional planning commissions.
- 2) **Wetland Restoration** means the re-establishment of a filled, dredged, or drained wetland to its historic condition, so as to restore lost functions to the greatest extent practicable, by removal of fill, restoration of hydrology to the area, or by such other means necessary.
- 3) **Wetland Creation** means the transformation of upland to wetland at a site where upland was not created by human activity such as by filling or water diversion.
- 4) **Payment** in-lieu of the three options above after they have been considered and determined not feasible. Payment is provided to the Aquatic Resource Mitigation Fund if the project will fill less than one acre of wetlands or will impact up to 3 acres if it is a public roadway or public utility project.

## Mitigation Checklist

For projects that require mitigation, the Standard Dredge and Fill application shall be considered **administratively complete** when a Preliminary Mitigation Package is submitted with the following items:

\_\_\_\_\_ An **explanation** of which of the mitigation options is/are being proposed for compensatory mitigation.

\_\_\_\_\_ **Wetland creation**

\_\_\_\_\_ **Wetland restoration**

\_\_\_\_\_ **Upland buffer preservation**

\_\_\_\_\_ **Payment to Aquatic Resource Mitigation Fund**

\_\_\_\_\_ A plan showing the general location of the proposed mitigation site.

\_\_\_\_\_ A functional assessment of the impacted jurisdictional area(s).

\_\_\_\_\_ A functional assessment of the proposed mitigation site.

\_\_\_\_\_ A completed agreement form signed by the applicant and noting the date when a complete mitigation proposal will be submitted to DES. The agreement form is attached to this checklist.

Where **upland buffer preservation** is proposed:

\_\_\_\_\_ A draft report that documents the current property conditions.

\_\_\_\_\_ A summary of the conservation values and goals.

Where **wetland restoration or creation** is proposed:

\_\_\_\_\_ A summary of the proposed measures.

**For a compensatory mitigation proposal to be deemed complete, the applicant shall consult DES rules, Env-Wt 800 which requires additional information to be submitted such as the following items:**

For projects that involve **upland buffer preservation**:

\_\_\_\_\_ Final baseline documentation report of the land proposed for protection, which describes current property conditions and includes photographs.

\_\_\_\_\_ A copy of the proposed conservation easement language or language noting conveyance of fee simple ownership.

\_\_\_\_\_ A surveyed plan showing the location of the proposed conservation area boundaries.

\_\_\_\_\_ A statement from the proposed grantee indicating that the proposed grantee will accept the easement or fee simple deed.

For projects that involve **wetland restoration or creation**:

\_\_\_\_\_ Explain how the proposal creates hydrologic conditions or land connections that will produce the desired wetland functions or values to be restored or created.

\_\_\_\_\_ Detailed plans with existing and proposed grades, predicted water fluctuations, and proposed wetland cover types.

\_\_\_\_\_ Construction procedures and timing of the work to take place.

\_\_\_\_\_ A planting proposal, source of soils to be used, erosion controls to be installed, and an invasive species control plan if applicable.

For projects that will provide **payment into the Aquatic Resource Mitigation Fund**:

☐ Describe what other forms of mitigation were considered and why they are not feasible.

☐ Request DES to calculate a payment amount.